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9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA, ) NO: 2:18-CR-00220-WFN  
12 )  
13 )  
14 Plaintiff, ) PLAINTIFF'S BRIEFING  
15 vs. ) REGARDING RESTITUTION  
16 ) REQUESTS  
17 JEFFREY JON FRANKLIN, )  
18 )  
19 )  
20 Defendant. )  
21 \_\_\_\_\_)

22 Plaintiff, United States of America, by and through William D. Hyslop,  
23 United States Attorney for the Eastern District of Washington, and Alison L.  
24 Gregoire, Assistant United States Attorney, submits the following briefing  
25 regarding restitution:

26 I. STATEMENT OF FACTS

27 On May 13, 2019, this Court accepted Defendant's plea of guilty to  
28 distribution of child pornography, but deferred accepting the Fed. R. Crim. P.  
11(c)(1)(C) plea agreement. The plea agreement indicated several restitution

requests had been received, but no precise restitution amount had been agreed upon by the parties. Of note, no financial aspects were dealt with by the plea, and the agreement also noted the \$5,000 assessment pursuant to the Justice for Victims of Trafficking Act of 2015, upon conviction, unless the Sentencing Court finds Defendant to be indigent, and that United States and Defendant are free to make whatever recommendation concerning the imposition of a criminal fine that they believe is appropriate.

Since Defendant's change of plea, the parties have attempted to come to a resolution regarding the restitution requests received, which are summarized as follows:

Series/Victim Name	# Images	Amount Requested
Blue Pillow Attorney: Carol Hepburn/Deborah Bianco	20	\$5000
Cindy Attorney: Thomas Watson	2	\$1,608,707
Jan_Feb Attorney: Christopher Peele	90	00.00
Jessica Attorney: James Marsh	1	\$3,000
Marineland1 Attorney: Carol Hepburn	1	\$55,000
Tara	5	\$18,136.40
Vicky Attorney: Carol Hepburn	2	\$10,000

1 The previous awards as reported to the Child Exploitation and Obscenity  
2 Division for the Department of Justice for the series seeking restitution are  
3 attached. (Attachment 1, filed restricted).  
4

5 Defendant's devices contained a total of 33,909 images and 534 video files.  
6 These are the only victims seeking restitution.  
7

## 8 II. ABILITY TO PAY

9 The Defendant's ability to pay restitution is immaterial to the Court's  
10 determination of the restitution owed to the victims. Section 366(f)(1)(A) of Title  
11 18 specifically states, "In each order of restitution, the court shall order restitution  
12 to each victim in the full amount of each victim's losses as determined by the court  
13 and without consideration of the economic circumstances of the defendant."  
14  
15 (emphasis added). *See generally In re Morning Star Packing Co., LP*, 711 F.3d  
16 1142, 1144 (9th Cir. 2013) ("district court committed legal error in denying  
17 restitution because of [defendant's] claimed financial status and the potential  
18 availability of civil remedies"); *United States v. Matsumaru*, 244 F.3d 1092, 1108  
19 (9th Cir. 2001) ("if the defendant is subject to the Mandatory Victims Restitution  
20 Act ('MVRA'), the district court need not assess the defendant's ability to pay  
21 restitution"). Defendant's ability to pay is only relevant to the Court's  
22 determination of whether the restitution should be paid immediately in a lump sum,  
23 or paid in installments over a period of time. 18 U.S.C. § 3664(f)(2); *United States*  
24  
25  
26  
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1 *v. Curran*, 460 F. App'x 722, 724–25 (9th Cir. 2011) (“Although the court could  
2 not consider Curran's financial condition in imposing restitution, it must do so  
3 when fashioning a payment schedule for it”). Thus, the Court should order  
4 restitution in the full amount sought by the Government, as explained in detail  
5 below, without regard to the Defendant’s ability to pay.  
6  
7

8 In terms of the JVTAs special assessment in the amount of \$5,000, the statute  
9 mandates the imposition of that assessment unless the Defendant is indigent. 18  
10 U.S.C. § 3014(a) (“the court shall assess an amount of \$5,000 on any non-indigent  
11 person . . .”). Here, Defendant is non-indigent.  
12

13 Although the Defendant did not provide a full description of his financial  
14 assets to Probation, he did disclose some information. 18 U.S.C. § 3664(d)(3)  
15 (“Each defendant shall prepare and file with the probation officer an affidavit fully  
16 describing the financial resources of the defendant, including a complete listing of  
17 all assets owned or controlled by the defendant as of the date on which the  
18 defendant was arrested ... and such other information that the court requires  
19 relating to such other factors as the court deems appropriate.”) Defendant’s limited  
20 disclosure indicates he has annual earnings of approximately \$60,000 and that he  
21 owes \$80,000 on his home. He also owns several older vehicles. Defendant has no  
22 wife, children, or other dependents. Defendant failed to provide any information  
23 regarding on hand or savings, there is no mention of a pension or other retirement  
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1 account or lack thereof, and there is no specific mention of the estimated \$160,000  
2 equity Defendant has in his home. Nonetheless, based on the information provided  
3 by Defendant, he is clearly “non-indigent” to justify the imposition of the \$5,000  
4 JVT A fine.  
5

### 6 III. ARGUMENT 7

8 Pursuant to the Crime Victim’s Rights Act (18 U.S.C. § 3771(a)(6)) and the  
9 Mandatory Restitution for Sexual Exploitation of Children Act (18 U.S.C. § 2259),  
10 the United States does intend to seek restitution, on behalf of the victims seeking  
11 restitution, at sentencing. As noted above, Section 3664(f)(1)(A) of Title 18  
12 specifically states: “In each order of restitution, the court shall order restitution to  
13 each victim in the full amount of each victim’s losses as determined by the court  
14 and without consideration of the economic circumstances of the defendant.” Of  
15 note, the substantial majority of Defendant's victims are not seeking restitution.  
16  
17

18 On December 7, 2018, the Amy, Vicky, and Andy Child Pornography  
19 Victim Restitution Act of 2018 was signed into law. The law is not retroactive and  
20 is not applicable to this case, since Defendant's charged misconduct predates  
21 December 7, 2018, by approximately six months. However, the law is informative  
22 in determining an appropriate amount of restitution when the amounts sought range  
23 from nothing to over 1.5 million dollars. Once the law is in effect, the Court “shall  
24 order” restitution in an amount that reflects defendant’s “relative role in the causal  
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process that underlies the victim's losses," but not less than \$3,000 in restitution per victim. [Sec. 3]. Additionally the new law will call for an *additional* assessment up to \$17,000 for a conviction of possession or access with intent to view. [Sec. 5].

Again, the Government does not argue the Court *must* impose at least \$3,000 in restitution in this case per victim, as the law is inapplicable to Defendant, giving the timing of his misconduct. Instead, the Government argues the \$3,000 is a good starting point in determining what is reasonable. Thus, the Government is seeking the following restitution amounts:

Series/Victim Name	# Images	Amount Sought by The United States
Blue Pillow Attorney: Carol Hebbburn/Deborah Bianco	20	\$5,000 (given the number of images and that \$5,000 was requested)
Cindy Attorney: Thomas Watson	2	\$3,000
Jan_Feb Attorney: Christopher Peele	90	00.00
Jessica Attorney: James Marsh	1	\$3,000
Marineland1 Attorney: Carol Hepburn	1	\$3,000
Tara	5	\$5,000 (given the number of images)
Vicky Attorney: Carol Hepburn	2	\$3,000
<b>TOTAL</b>		<b>\$22,000.00</b>

Finally, as addressed above, Defendant's ability to pay the foregoing restitution amounts is immaterial to the Court's imposition of the restitution. *See*

1 18 U.S.C. § 3664(f)(1)(A). Accordingly, the Government requests that the Court  
2 order restitution in full in the amount of \$22,000.

3  
4 Respectfully submitted this 1st day of October 2019.

5 William D. Hyslop  
6 United States Attorney

7  
8 s/ Alison L. Gregoire  
9 Alison L. Gregoire  
10 Assistant United States Attorney

11 CERTIFICATION

12 I hereby certify that on October 1, 2019, I electronically filed the foregoing  
13 with the Clerk of the Court using the CM/ECF System which will send notification  
14 of such filing to the following:  
15

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